

Study H-820

June 16, 2000

First Supplement to Memorandum 2000-37**Mechanic's Liens (Letters)**

Attached to this supplement are some letters we have just received commenting on aspects of the mechanic's lien study.

Exhibit p.

1. Matt Petersen, Mead Clark Lumber Co., Santa Rosa (June 8, 2000) 1
2. Rodney Moss, Moss, Levitt & Mandell, Los Angeles (June 12, 2000) 3

We will discuss these materials at the meeting.

Those working on this study will be interested to know that the Governor has declared this week (June 12 - 18) as "California Contractors Week," in observance of the Golden State's 279,000 licensed building contractors." (For the complete proclamation, see <http://www.governor.ca.gov/briefing/pressreleases/jun00/pr00148613.html>.)

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



June 8, 2000

Mr. Stan Ulrich
Assistant Executive Secretary

California Law Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Respectfully,
Matt Petersen
Vice President
Mead Clark Lumber Company
Second Vice President Lumber Association of California & Nevada

Law Revision Commission
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JUN 14 2000

File: _____

RE: Mechanic's Lien Study

Dear Mr. Ulrich:

This is in response to the tremendous amount of material you have supplied us concerning the Study H-820 – Mechanic's Lien Law. We appreciate the thoroughness of you and the Commission. As material suppliers our stake in this debate could have very long-term effects on how we do business. Most of the independent material suppliers in our state operate with some confidence in the mechanic's lien laws. We depend on all parties to carry out their obligations to us and other suppliers involved in their projects. However when there is a problem receiving payment we have been able to rely on the mechanic's lien law to recover the funds owed to us. The truth is that if we don't do our homework on the front end of the process, credit checks, loan verifications, and of course preliminary notices we lose our ability to enforce a lien. None of this is news to you or your commission but I feel it is necessary to frame what actually happens in the market place.

When the material supplier follows all the steps needed to make a mechanic's lien enforceable, the homeowner usually has become very aware of their responsibilities. It is typical for the homeowner, once they have received the preliminary notice, to contact the supplier or their contractor and require "Conditional/Unconditional" releases.

This system has worked well for many years. There are rare occasions of a homeowner having to pay twice for materials. The commission has stated that there is not sufficient funds or data to substantiate this actual number. As people doing business in our local communities we feel we can provide a reliable gauge of the actual problem.



In our particular case we send out over one thousand preliminary notices every year. Out of these we typically file liens on less than 10% and of that number it is very rare that we actually have to enforce the lien to collect payment. There may have been one or two incidences a year. We always make an effort to work with the homeowner to first exhaust all possibilities to collect from the contractor. Collection from the homeowner is always the last resort.

The Contractor State License Board has proposed a Home Improvement Protection Plan (HIPP). This idea has a lot of merit. We believe that with more education the homeowner would be even more aware of the potential pitfalls. There would be a Mechanic's Lien Warning included in the contract and the contractor would be required to inform the consumer of their part in the payment to subcontractor and material suppliers. This is a simple idea, which could be implemented very easily. We would be totally in favor of this proposal and hope it gets serious consideration.

To conclude, we feel the problem is very small. The subcontractors and material suppliers are not out to victimize the homeowner. There has to be some way to help prevent this problem, without losing this valuable tool, mechanic's liens.

Respectfully,

A handwritten signature in black ink that reads "Matt Petersen". The signature is written in a cursive style with a long, sweeping underline.

Matt Petersen

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June 12, 2000

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JUN 14 2000

Stan Ulrich
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Room D-1
Palo Alto, CA 94303-4739

File: _____

Re: Proposed Legislation re Mechanic's Liens

Dear Mr. Ulrich:

You have been sending me copies of the various materials recently developed in connection with the above-entitled matter. As I believe you know, I have written upwards of 20 articles or related materials dealing with mechanic's liens and related remedies. I have been practicing exclusively in the construction area for 39 years come July. For whatever value it may have, I wanted to state my opinion concerning the Acret proposal.

I believe the proposed legislation is inappropriate for several reasons. First, I believe it is unconstitutional since it deprives subcontractors and material suppliers of a guaranteed right of mechanic's lien. You have seen substantial materials on this question and you have tended to come to a contrary conclusion.

Second, I believe it is unfair. Owners can protect themselves through the use of waivers of lien, joint checks and the obtaining of a labor and material bond on their general contractor. Subcontractors and material suppliers cannot protect themselves. They must necessarily grant credit to the general contractor or they cannot continue in business. If they are not paid by the general contractor, their most expeditious remedy is the filing of a mechanic's lien. A protracted lawsuit against the general contractor who may or may not prove credit worthy is nowhere near the same force and effect as the mechanic's lien right. Thus, one group impacted by the mechanic's lien has the means to protect itself while the other does not.

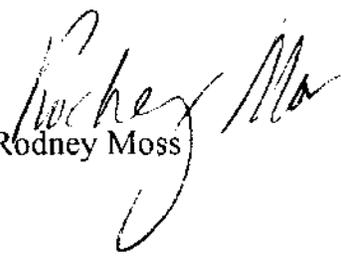
Stan Ulrich
June 12, 2000
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Third, I do not believe the proposed legislation is practical. We have had a system in place allowing mechanic's liens to subcontractors and material suppliers on single-family dwellings or duplexes owned by an individual for in excess of 100 years and the system has proved completely workable. To make the change set forth in the Acret proposal may cause chaos. There will no doubt be confusion because many owners as well as subcontractors and materialmen will be unaware of the change. There will continue to be liens filed by persons without lien rights which will cause additional inappropriate litigation. There will be credit extended in situations where there is no protection to the subcontractor and/or material supplier in light of the changed circumstances which will result in loss and additional bankruptcies.

Thank you for your attention to these comments.

Very truly yours,

MOSS, LEVITT & MANDELL


By Rodney Moss

RM:ll
cc: Gordon Hunt, Esq.